

108TH CONGRESS  
1ST SESSION

# H. R. 3106

To strengthen the law enabling the United States to expeditiously remove terrorist criminals, to add flexibility with respect to the places to which aliens may be removed, to give sufficient authority to the Secretary of Homeland Security and the Attorney General to remove aliens who pose a danger to national security, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 17, 2003

Mr. SMITH of Texas (for himself, Mr. FORBES, Mr. KING of Iowa, Mr. FEENEY, Mr. CARTER, Mr. GALLEGLY, Mr. GOODLATTE, Mrs. BLACKBURN, Mr. BARTLETT of Maryland, Mr. JENKINS, and Ms. HART) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To strengthen the law enabling the United States to expeditiously remove terrorist criminals, to add flexibility with respect to the places to which aliens may be removed, to give sufficient authority to the Secretary of Homeland Security and the Attorney General to remove aliens who pose a danger to national security, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Removal of Terrorist  
3 Criminal Aliens Act of 2003”.

4 **SEC. 2. EXPEDITED REMOVAL OF TERRORIST CRIMINAL**  
5 **ALIENS.**

6 (a) IN GENERAL.—Title II of the Immigration and  
7 Nationality Act (8 U.S.C. 1151 et seq.) is amended by  
8 inserting after section 238 the following:

9 **“SEC. 238A. EXPEDITED REMOVAL OF TERRORIST CRIMI-**  
10 **NAL ALIENS.**

11 “(a) IN GENERAL.—The Secretary of Homeland Se-  
12 curity, in such Secretary’s discretion, may in the case of  
13 an alien described in subsection (b), determine whether  
14 such alien is deportable and issue a final order of removal  
15 pursuant to the procedures set forth in this section.

16 “(b) ALIENS DESCRIBED.—An alien is described in  
17 this subsection if—

18 “(1) the alien, whether or not admitted into the  
19 United States, was convicted of any criminal offense  
20 described in paragraph (2), (3)(B), or (6) of section  
21 237(a) (without regard to the date of the commis-  
22 sion of the offense); and

23 “(2) the Secretary of Homeland Security, in  
24 such Secretary’s discretion and in consultation with  
25 appropriate heads of agencies of the executive  
26 branch, certifies that the alien is engaged in any ac-

1 tivity that endangers the national security of the  
2 United States.

3 “(c) EXECUTION OF ORDER.—

4 “(1) IN GENERAL.—The Secretary of Homeland  
5 Security, in such Secretary’s discretion, may at any  
6 time execute any order described in subsection (a),  
7 except—

8 “(A) during the 14-day period commencing  
9 after the date on which such order is issued, in  
10 order that the alien has an opportunity to apply  
11 for judicial review under section 242, unless  
12 this subparagraph is waived by the alien; or

13 “(B) if the removal has been stayed under  
14 section 242(f)(2).

15 “(2) REVIEW.—Notwithstanding any other pro-  
16 vision of law, including section 2241 of title 28,  
17 United States Code, no court other than a court of  
18 appeals pursuant to its jurisdiction under section  
19 242 of this Act shall have jurisdiction to review or  
20 set aside any order, action, or decision taken or  
21 issued pursuant to this section. Review in the court  
22 of appeals shall be limited to determining whether  
23 the petitioner is—

24 “(A) an alien; and

1           “(B) subject to a final judgment of convic-  
2           tion for an offense described in paragraph (2),  
3           (3)(B), or (6) of section 237(a).

4           “(d) REGULATIONS.—Proceedings before the Sec-  
5   retary of Homeland Security under this section shall be  
6   in accordance with such regulations as such Secretary  
7   shall prescribe. Such regulations shall provide that—

8           “(1) the alien shall be given reasonable notice  
9           of the grounds for removal alleged and of the oppor-  
10          tunity described in paragraph (3);

11          “(2) the alien shall have the privilege of being  
12          represented (at no expense to the Government) by  
13          such counsel, authorized to practice in such pro-  
14          ceedings, as the alien shall choose;

15          “(3) the alien shall have a reasonable oppor-  
16          tunity to inspect the evidence and rebut the charges  
17          that the alien is subject to a final judgment of con-  
18          viction for an offense described in paragraph (2),  
19          (3)(B), or (6) of section 237(a);

20          “(4) a determination shall be made on the  
21          record that the individual upon whom the notice for  
22          the proceeding under this section is served (either in  
23          person or by mail) is, in fact, the alien named in  
24          such notice;

1 “(5) a record shall be maintained for judicial  
2 review; and

3 “(6) the final order of removal may not be ad-  
4 judicated by the same person who issues the  
5 charges.

6 “(e) ELIGIBILITY FOR CERTAIN RELIEF.—No alien  
7 described in subsection (b), regardless of whether the alien  
8 is subject to procedures under this section or to pro-  
9 ceedings under section 240, shall be eligible for with-  
10 holding under section 241(b)(3) or for any discretionary  
11 relief from removal under the immigration laws of the  
12 United States.”.

13 (b) CLERICAL AMENDMENT.—The table of contents  
14 for the Immigration and Nationality Act is amended by  
15 inserting after the item relating to section 238 the fol-  
16 lowing:

“238A. Expedited removal of terrorist criminal aliens.”.

17 **SEC. 3. ADDITIONAL REMOVAL AUTHORITIES.**

18 (a) IN GENERAL.—Section 241(b) of the Immigra-  
19 tion and Nationality Act (8 U.S.C. 1231(b)) is amended—

20 (1) in paragraph (1)—

21 (A) by striking “Attorney General” each  
22 place such term appears and inserting “Sec-  
23 retary of Homeland Security”;

24 (B) in each of subparagraphs (A) and (B),  
25 by striking the period at the end and inserting

1 “unless, in the opinion of the Secretary of  
2 Homeland Security, removing the alien to such  
3 country would be prejudicial to the United  
4 States.”; and

5 (C) by amending subparagraph (C) to read  
6 as follows:

7 “(C) ALTERNATIVE COUNTRIES.—If the  
8 alien is not removed to a country designated in  
9 subparagraph (A) or (B), the Secretary of  
10 Homeland Security may, in such Secretary’s  
11 discretion, remove the alien to—

12 “(i) the country of which the alien is  
13 a citizen, subject, or national, unless the  
14 country prevents the alien from entering  
15 the country upon the alien’s removal there;  
16 or

17 “(ii) any country whose government  
18 will accept the alien into that country.”;  
19 and

20 (2) in paragraph (2)—

21 (A) by striking “Attorney General” each  
22 place such term appears and inserting “Sec-  
23 retary of Homeland Security”;

24 (B) by amending subparagraph (D) to  
25 read as follows:

1           “(D) ALTERNATIVE COUNTRIES.—If the  
2           alien is not removed to a country designated  
3           under subparagraph (A)(i), the Secretary of  
4           Homeland Security may, in such Secretary’s  
5           discretion, remove the alien to a country of  
6           which the alien is a subject, national, or citizen,  
7           unless—

8                   “(i) the country prevents the alien  
9                   from entering the country upon the alien’s  
10                  removal there; or

11                  “(ii) in the opinion of the Secretary of  
12                  Homeland Security, removing the alien to  
13                  the country would be prejudicial to the  
14                  United States.”; and

15           (C) by amending subparagraph (E)(vii) to  
16           read as follows:

17                   “(vii) Any country whose government  
18                   will accept the alien into that country.”.

19           (b) EFFECTIVE DATE.—The amendments made by  
20           subsection (a) shall take effect on the date of the enact-  
21           ment of this Act and shall apply to any deportation, exclu-  
22           sion, or removal on or after such date pursuant to any  
23           deportation, exclusion, or removal order, regardless of  
24           whether such order is administratively final before, on, or  
25           after such date.

1 **SEC. 4. REMOVAL OF ALIENS POSING A DANGER TO NA-**  
2 **TIONAL SECURITY.**

3 Section 237(a)(4) of the Immigration and Nationality  
4 Act (8 U.S.C. 1227(a)(4)) is amended by adding at the  
5 end the following:

6 “(E) NATIONAL SECURITY.—

7 “(i) ALIENS OTHER THAN LAWFUL  
8 PERMANENT RESIDENTS.—An alien, other  
9 than an alien lawfully admitted for perma-  
10 nent residence, whose presence or activities  
11 in the United States the Attorney General  
12 or the Secretary of Homeland Security has  
13 reason to believe poses or pose a danger to  
14 the national security of the United States  
15 (as defined in section 219(c)(2)), is deport-  
16 able.

17 “(ii) DELEGATION.—Delegation by  
18 the Attorney General and the Secretary of  
19 Homeland Security of authority to make  
20 determinations for the purpose of estab-  
21 lishing deportability under this subpara-  
22 graph shall be limited to the Deputy Attor-  
23 ney General and the Deputy Secretary of  
24 Homeland Security, respectively.

25 “(iii) BEST AVAILABLE INFORMA-  
26 TION.—In making determinations for the



1 purpose of establishing whether an alien is  
2 deportable under this subparagraph, the  
3 Attorney General or the Deputy Attorney  
4 General, and the Secretary of Homeland  
5 Security or Deputy Secretary of Homeland  
6 Security, may take into account the best  
7 available information from the intelligence  
8 community, including confidential or na-  
9 tional security information, and shall con-  
10 sult with appropriate heads of agencies of  
11 the executive branch.

12 “(iv) JUDICIAL REVIEW.—A deter-  
13 mination made under this subparagraph  
14 shall be affirmed if challenged in Federal  
15 court where a facially legitimate and bona  
16 fide reason in support of the determination  
17 is provided.

18 “(v) RELIEF AND WITHHOLDING.—An  
19 alien who is deportable under this subpara-  
20 graph shall not be eligible for any discre-  
21 tionary relief from removal or for with-  
22 holding of removal under section  
23 241(b)(3). Notwithstanding any other pro-  
24 vision of law, including section 2241 of  
25 title 28, United States Code, no court shall

1           have jurisdiction to review a denial of relief  
2           or withholding made pursuant to this  
3           clause.”.

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